

REMARKS

Claims 1-14 are pending in the present application. Claims 1-3 have been amended. Support for newly amended claims can be found throughout the specification as filed. Specifically, support for the amendments to claims 1-3 can be found at least at page 7, lines 7-10, page 9, lines 14-17 and in SEQ ID NO:2 and SEQ ID NO:4. No new matter has been added.

Amendment or cancellation of claims should in no way be construed as an acquiescence, narrowing, or surrender of any subject matter. Amendments or cancellations have been made not only to point out with particularity and to claim the present invention, but also to expedite prosecution of the present application. Applicants reserve the option to prosecute the originally filed claims further, or similar ones, in the instant or subsequently filed patent applications.

Rejection of Claims 1-3 and 6-14 Under 35 U.S.C. § 112, First Paragraph:

Written Description

The Examiner has rejected claims 1-3 and 6-14 under 35 U.S.C. § 112, first paragraph, as allegedly not meeting the written description requirement. Specifically, the Examiner contends that “the specification does not contain a written description of the claimed invention, in that the disclosure does not reasonably convey to one skilled in the art that the inventor(s) had possession of the claimed invention” (p. 3 of instant Office Action). In rejecting the claims, the Examiner also contends that the “Applicant has not provided objective evidence of to other variants encompassed by the claimed invention” (p. 4 of instant Office Action).

Applicants respectfully traverse the rejection. However, in order to expedite prosecution and in no way conceding the Examiner’s argument, claims 1-3 have been amended to recite, “a human or mouse B7-2 molecule.” Applicants believe the claim amendments obviate the Examiner’s rejection under 35 U.S.C. § 112 and Applicants therefore respectfully request reconsideration and withdrawal of the rejection.

Rejection of Claims 1-3 and 6-14 Under 35 U.S.C. § 112, First Paragraph: Enablement

The Examiner has rejected claims 1-3 and 6-14 under 35 U.S.C. § 112, first paragraph, as allegedly not enabling the nucleic acids recited in claims 1-3. Specifically, the Examiner states

that, “the specification as filed, does not reasonably provide enablement for any ‘B7-2 molecule and fragments thereof having the ability to costimulate a T cell and he ability to bind a CD28 or CTLA4’” (p. 8 of instant office action).

Applicants respectfully traverse the rejection. As set forth above, in order to expedite prosecution and in no way conceding the Examiner’s rejection, claims 1-3 have been amended to recite, “a human or mouse B7-2 molecule.” Applicants believe the claim amendments obviate the Examiner’s rejection under 35 U.S.C. § 112 and Applicants respectfully request reconsideration and withdrawal of the rejection.

Obviousness-Type Double Patenting Rejections

The Examiner has provisionally rejected claims 1-14 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-25 of issued U.S. Patent No. 6,723,705 and over claims 1-12 of issued U.S. Patent No. 6,451,305. Applicants respectfully request that the Examiner hold in abeyance all obviousness-type double patenting rejections based on said issued U.S. patent until allowable subjected matter is indicated, at which point Applicants will consider filing a terminal disclaimer.

CONCLUSION

Early and favorable reconsideration is respectfully solicited. The Examiner may address any questions raised by this submission to the undersigned at (617) 832-1000. If any fees are due, the Commissioner is hereby authorized to credit any overpayment or charge any deficiencies to **Deposit Account No. 06-1448, Reference No. DFS-091.04.**

Respectfully submitted,
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